

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HENRY LEE TOWNSEND,

Petitioner,

No. C 07-4904 PJH (PR)

vs.

**ORDER DENYING
CERTIFICATE OF
APPEALABILITY**

DERRAL G. ADAMS, Warden,

Respondent.

This is a habeas case under 28 U.S.C. § 2254 filed pro se by a state prisoner. The court denied the petition in a ruling entered on June 29, 2009. Judgment was entered that day. An amended judgment was filed on July 23, 2009. Petitioner has filed a notice of appeal. Although petitioner has not requested a certificate of appealability, the notice of appeal will be treated as containing such a request by implication. *See United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997) (if no express request is made for a COA, the notice of appeal shall be deemed to constitute a request for a certificate).

A petitioner may not appeal a final order in a federal habeas corpus proceeding without first obtaining a certificate of appealability (formerly known as a certificate of probable cause to appeal). *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A judge shall grant a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The certificate must indicate which issues satisfy this standard. *See id.* § 2253(c)(3). "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v.*

1 *McDaniel*, 120 S.Ct. 1595, 1604 (2000).

2 This was not a close case. For the reasons set out in the order denying the petition,
3 jurists of reason would not find the result debatable or wrong. Petitioner's implied request
4 for a certificate of appealability is **DENIED**.

5 The clerk shall transmit the file, including a copy of this order, to the Court of
6 Appeals. See Fed. R.App.P. 22(b); *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir.
7 1997). Petitioner may then ask the Court of Appeals to issue the certificate, see R.App.P.
8 22(b)(1), or if he does not, the notice of appeal will be construed as such a request, see
9 R.App.P. 22(b)(2).

10 **IT IS SO ORDERED.**

11 Dated: October 1, 2009.



PHYLLIS J. HAMILTON
United States District Judge